



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 4489-99

2 June 2000

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C.1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's Naval Record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, applied to this Board requesting, in effect, that his naval record be corrected to show a more favorable type of discharge than the bad conduct discharge issued on 13 June 1957.

2. The Board, consisting of Ms. Schnittman and Messrs. Bishop and Chapman, reviewed Petitioner's allegations of error and injustice on 31 May 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that Petitioner's application to the Board was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Navy on 19 January 1955 for a minority enlistment at age 17. At that time, he had eight years of formal education. The record reflects that he was

advanced to SN (E-3) and served without incident until 28 December 1955 when he received nonjudicial punishment (NJP) for a one-hour period of unauthorized absence (UA). Punishment consisted of a warning.

d. On 2 July 1956, Petitioner was apprehended by civil authorities and sentenced to 90 days confinement in the county jail for a traffic violation. Further facts and circumstances regarding the civil conviction are not on file in the record. He surrendered to military authority on 10 August 1956. On 20 August 1956, Petitioner was convicted by special court-martial of the foregoing 39 day period of UA. He was sentenced to confinement at hard labor for one month and a forfeiture of \$30.

e. On 10 January 1957, Petitioner was convicted by a second special court-martial of possession of a non-regulation uniform; possession of a civilian shirt; possession of a pair of underdrawers, an undershirt, and a towel marked with another individual's name without being marked as "discarded clothing"; larceny of a raincoat, a value of about \$5; failure to pay a taxi cab fare of \$3.85; and a 17 hour period of UA. He was sentenced to confinement at hard labor for a period of three months, reduction in rate to SR (E-1), and a bad conduct discharge.

f. On 25 February 1957, Petitioner requested remission of the adjudged discharge and restoration to duty. In his request, he stated that he had to support his mother and five siblings, he was their only means of support, and restoration to duty would help him support them.

g. In a separate statement, Petitioner said that he had witnesses who testified that he was on the ship at the time the cab driver said he was picked up in downtown Norfolk. At trial, the cab driver said that he had picked up a black man on the night in question, and pointed him out in the courtroom as being the one. However, Petitioner alleged that the cab driver had no other choice since he was the only black man in the courtroom.

h. Thereafter, clemency was denied and the Navy Board of Review affirmed the findings and the sentence on 2 May 1957. Petitioner received the bad conduct discharge on 13 June 1957.

i. Petitioner contends that he was convicted on circumstantial evidence. He claims that the rain coat belonged to one of his shipmates he had been out with and they got their coats mixed up. However, this individual would not testify for him because he feared he might get into trouble also. With regard to the cab fare, Petitioner states that the cab driver testified a black man had hired his cab and not paid him. Petitioner states the cab driver identified him and then said "they all look alike." With regard to the short UA, he was late in returning from emergency leave because the bus was late due to ice and snow, and he turned himself in when he arrived. However, he missed movement since the ship had gone to Yorktown to off load ammunition.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes Petitioner was only 17 when he enlisted and had only eight years of formal education. Although he had two special court-martial convictions, his offenses were relatively minor. Although the Board is prohibited by law from reviewing the findings of a court-martial and must restrict its review to determining if the sentence of the court-martial should be reduced as a matter of clemency, the Board notes the extreme racial bias that existed in the south during the 1950s and the negative attitude Norfolk residents had toward Sailors. The Board believes that Petitioner was a victim of these biases when he was sentenced to 90 days in the county jail for a traffic violation. The Board also believes that some of the offenses charged at the second court-martial were so minor it is unlikely they would have been referred to a court-martial or charged as offenses under today's standards. The Board believes that these offenses do not warrant the life-long stigma of a bad conduct discharge and concludes that it would be appropriate and just to recharacterize his discharge to a general discharge under honorable conditions.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 13 June 1957 by reason of misconduct vice the bad conduct discharge issued on that date. This should include the issuance of a new DD Form 214.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

c. That upon request, the Department of Veterans Affairs be informed that Petitioner's application was received by the Board on 14 July 1999.

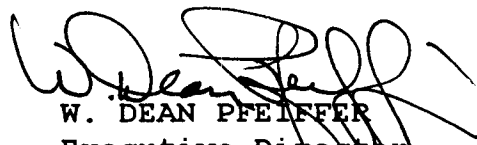
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director